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EX PARTE OR LATE FILED

October 19, 1994

By Hand

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Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

OCT 19 1994

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

Re: Written Ex Parte Presentation  
in MM Docket Nos. 92-266 & 93-215/  
Regarding the Commission's Proposed  
"Going Forward" Cable Rate Rules

Dear Mr. Caton:

Pursuant to the Commission's ex parte rule, please find enclosed two copies of a written ex parte presentation. See 47 C.F.R. § 1.1206(a)(1). The written presentation was delivered by hand today to Chairman Hundt, Commissioners Quello, Barrett, Chong and Ness, Meredith Jones, Blair Levin, Mary Ellen Burns, Patrick Donovan, Mary McManus and Richard Welch.

Please direct any questions regarding this filing to the undersigned.

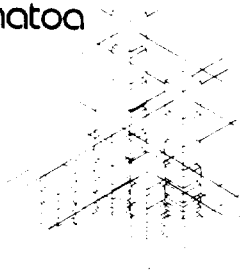
Sincerely,

William E. Cook, Jr.

Enclosures

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**The National Association of  
Telecommunications Officers  
and Advisors**

An affiliate of the National League of Cities

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EX PARTE OR LATE FILED

October 19, 1994

**By Hand**

The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

Re: Written Ex Parte Presentation  
in MM Docket Nos. 92-266 & 93-215  
Regarding the Commission's Proposed  
"Going Forward" Cable Rate Rules

Dear Chairman Hundt:

I am writing on behalf of the National Association of Telecommunications Officers and Advisors ("NATOA") to urge the Commission to delay releasing the "going-forward" rules for rate regulation in order to permit a period of public comment on the proposed rules. Two copies of this letter are being filed with the Secretary of the Commission as required by the Commission's ex parte rule. See 47 C.F.R. § 1.1206(a)(1).

We believe a delay for a public comment period is essential because there has not been an adequate opportunity thus far for such comment on the "going-forward" rules, which we believe represent a dramatic change to the Commission's current cable rate regulation rules. Absent such delay, we urge the Commission to modify the proposed rules to ensure that consumers do not pay unreasonable rates for new programming services, and to ensure that such rules do not further burden local franchising authorities, who are finding it administratively difficult to enforce the myriad of rules already implemented by the Commission.

Although we have not had an opportunity to review the text of the proposed "going-forward" rules, it is

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our understanding from conversations with Commission Staff that the Commission's proposed rules would permit cable operators to: (a) create new tiers of services at rates established by market forces, rather than by the Commission's benchmark and price cap regulations; and (b) add new services on existing basic and cable programming service tiers at a rate higher than permissible under the Commission's current rules, and remove such services to a new service tier after an "incubation" period.

We fear that these proposed rules simply will restore to cable operators monopolistic pricing power, and will erase the benefits of the rate refunds and rate reductions many cable subscribers have enjoyed under the Commission's existing rules.

Moreover, we believe that the proposed rules represent a solution to a problem that does not exist. It is our understanding from Commission Staff that the proposed "going-forward" rules are in response to claims by cable operators and programmers that cable operators will not add new programming services because of inadequate compensation for such programming under the Commission's current rules. We disagree, and believe that the current rules provide sufficient incentives to cable operators to add new programming services and, indeed, we believe that cable operators have been expanding channel capacity and adding programming services under the Commission's existing rules. To the extent certain cable operators have not added new programming services, we believe that other factors -- rather than disincentives under the existing rate rules -- account for the absence of new programming services. For example, many cable operators have argued, particularly as part of the Commission's "must carry" proceeding, that they simply do not have channel capacity to carry additional programming services. Because we believe that other factors may be the cause of the alleged failure of cable operators to add new programming services, it is critical that, prior to issuing the "going-forward" rules, the Commission solicit public comment and additional evidence as to reasons why cable programming services have not been added. We believe that such additional evidence will demonstrate that there is no factual support for the "going-forward" rules.

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We also believe the Commission should solicit public comments on the proposed rules. Based on conversations with Commission Staff, we have identified a number of initial concerns with the proposed rules as we understand them. (We would expect that, after having an opportunity to review the actual text of the proposed rules, we might identify additional concerns.) Among other concerns, we urge the Commission to take into account the following concerns before adopting the final rules:

° Subscribers May Pay for Undesired

Programming: By permitting cable operators to add new programming on the basic tier at a significant rate increase, the Commission may force basic-only subscribers -- who include many low-income and elderly subscribers and captive subscribers who could not otherwise receive over-the-air broadcast stations -- to pay for programming services they do not want. NATOA is particularly concerned that cable operators may add home shopping, barker and other low-cost channels that will permit cable operators to impose rate increases that far exceed the actual cost of adding such channels. For these reasons, among other options, the Commission should consider limiting application of the "going-forward" rules to cable programming service tiers and limiting the ability of cable operators to take advantage of the significant rate increases permitted by the proposed rules to add home shopping channels and other low-cost channels (e.g., barker channels).

° Rules May Result in Unreasonable Rates:

Commission Staff informed NATOA that to account for the addition of new programming services to an existing tier, the "going-forward" rules will permit cable operators to set the rate for such a tier pursuant to a "price cap" formula that takes into account the licensing fee a cable operator pays for such programming. NATOA is concerned that the "price cap" formula may result in unreasonable rates. For example, cable operators receive home shopping revenues, advertising revenues and other compensation from certain programming services. Such compensation should be offset against the amount cable

operators may receive pursuant to the "price cap" formula. Otherwise, cable operators may essentially be compensated twice for new programming services. In addition, it is our understanding that the "price cap" formula only sets the initial rate for the service tier. We are concerned that the formula will encourage operators and programmers to "game" the "going-forward" rules. Operators and programmers may agree in the first year of a programming contract to a low rate for a programming service that is within the price cap formula. In subsequent years, the contract may provide for significantly higher payments, which a cable operator may attempt to recover as an external cost increase -- thereby avoiding the limit imposed in the initial year by the "price cap" formula. To resolve such concerns, the Commission should consider, among other options: (a) requiring that cable operators offset against the price cap formula any revenues they receive from new programming services; (b) limiting future increases in the cost of new programming services by permitting cable operators to receive on a going-forward basis only inflationary adjustments to the initial rate established by the price cap formula; and (c) limiting the "incubation" period for new programming services and requiring cable operators at the end of such period to (i) move the services to a new tier, (ii) offer the services on an "a la carte" basis, or (iii) leave the services on the existing tier, but adjusting the rate for such tier to eliminate that portion of the rate increase the cable operator was entitled to impose during the "incubation" period pursuant to the "going-forward" rules.

° Proposed Rules Would Increase Administrative Burdens on Franchising Authorities: Franchising authorities are finding it difficult to administer the Commission's rules, given the complexity of the rules, the constant revisions to the rules and the new rate filings permitted as a result of such revisions, and the frequency with which cable operators are permitted to submit rate filings to recover increases in

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external costs. The "going-forward" rules would add another layer of complexity to the rules, and would result in another round of rate filings by cable operators. Some franchising authorities already are considering decertifying, given the administrative burdens imposed by the current rules and the increasing frequency of appeals by operators of local rate decisions; the adoption of the "going-forward" rules may be the action that results in such decertifications. In order to limit the administrative burdens on franchising authorities, the Commission should consider applying the "going-forward" rules only to the cable programming service tier, and not to the basic tier subject to regulation by franchising authorities. (The Commission's current rules would continue to govern rate increases related to the addition of programming services to the basic tier.)

\* \* \* \*

Thank you for your attention to this matter of great concern to consumers and franchising authorities across the nation. We would be happy to talk to you, other Commissioners, and Commission Staff about the above issues at your convenience.

Sincerely,

  
Susan Littlefield  
President, NATOA

cc: The Honorable James H. Quello  
The Honorable Andrew C. Barrett  
The Honorable Susan Ness  
The Honorable Rachelle Chong  
Blair Levin, Esq.  
Meredith Jones, Esq.  
Mary Ellen Burns, Esq.  
Patrick Donovan, Esq.  
Mary McManus, Esq.  
Richard Welch, Esq.